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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,458	05/08/2001	Y. Tom Tang	PF-0636 USN	4361
27904	7590	12/01/2003	EXAMINER	
INCYTE CORPORATION (formerly known as Incyte Genomics, Inc.) 3160 PORTER DRIVE PALO ALTO, CA 94304			O HARA, EILEEN B	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/831,458

Applicant(s)

TANG ET AL.

Examiner

Eileen O'Hara

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

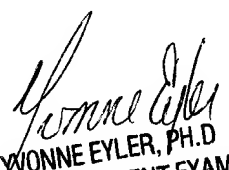
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 21-30 and 35-37.Claim(s) withdrawn from consideration: 32-34 and 38-42.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicants traverse the rejections under 35 U.S.C. §101 and §112, first paragraph, for lack of patentability utility for reasons previously made of record in the response to the Office Action of January 15, 2003 and the Declarations of Furness and Bedillion. Applicants also traverse the rejection of claims 21, 23, 26-28, 30, 35 and 37 under 35 U.S.C. §112, first paragraph, for lack of an adequate written description, for the reasons previously made of record in response to the Office Action of January 15, 2003. The rejections of the claims are maintained, for reasons of record in the Previous two Office Actions. Applicants also traverse rejection of claims 21-30 and 35-37 under 35 U.S.C. §112, second paragraph, and assert that the term "naturally occurring" is a well-known term in the art which Applicants intended to be used in such context, and that one of ordinary skill in the art would recognize that "a naturally occurring amino acid sequence" is one which occurs in nature, and could be synthetic, semi-synthetic, recombinant, allelic variants or from different species. Applicants' arguments have been fully considered but are not deemed persuasive, because all of the sequences existing in nature have not been identified, and it is not known which sequences would be "naturally occurring" and which would not, so the claims are indefinite, and the rejection is maintained..


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